

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 613 of 1997

AND

SPECIAL CIVIL APPLICATION No.1477 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

CHARAKKHADI PADVALA SANYUKT GRAM PANCHAYAT

Versus

RANCHHOD NATHABHAI

Appearance:

MR DH WAGHELA for Shri Charakkhadi Padvala Sanyukt
Gram Panchayat, Charakhadi.

MR HK RATHOD for Shri Ranchhod Nathabhai

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 24/04/97

COMMON JUDGMENT :

1. These two Special Civil Applications are directed against the Award dated 20.6.96 passed by the Labour Court, Rajkot in Reference (LCR) No.745 of 1988. The Gram Panchayat as well as the workman are aggrieved against this Award. While the Gram Panchayat is

contesting the relief of reinstatement with continuity of service and 70% backwages granted to the workman by the Labour Court, the workman is contesting the denial of 30% of the backwages and the grant of 70% backwages only.

2. Rule. Mr. Rathod waives service of Rule on behalf of respondent in Special Civil Application No.613 of 1997 and Mr. Waghela waives service of Rule on behalf of respondent in Special Civil Application No.1477 of 1997.

3. On 14.3.97 when these matters came up before this Court Mr. Waghela, learned counsel for the Gram Panchayat, sought time to seek instructions from the concerned Gram Panchayat on the question of backwages. However, there are no definite instructions with Mr. Waghela even today.

4. There is no dispute that Shri Ranchhod Nathabhai had been appointed with the aforesaid Gram Panchayat and had served the Panchayat for a period of nearly two and half years. The case of the Gram Panchayat is that the workman had been given appointment as Engine driver in place of one Shri Chhagan Chakku, who had been removed and when Chhagan Chakku came back with an order in his favour for taking him in service, the services of the present workman Shri Ranchhod Nathabhai had to be terminated. However, there is no dispute that despite this justification to terminate his services, notwithstanding the fact that this workman Shri Ranchhod Nathabhai had completed a period of two and half years in service, no retrenchment benefit and compensation was paid to him at the time of his termination in the year 1987. The workman raised the industrial dispute and the Labour Court had found that he was entitled to protection of S.25F as he was retrenched without following the requirements of S.25F. It is not the case of the contesting Gram Panchayat that the Gram Panchayat has been abolished or that there are any other reason for not granting the relief of reinstatement. In this view of the matter, when the retrenchment had been made effective without compliance of S.25F of the Industrial Disputes Act, I do not find any reason to interfere with the relief of reinstatement and continuity of service as has been granted by the Labour Court in favour of the workman Shri Ranchhod Nathabhai.

5. The Labour Court has granted 70% of the backwages. In this regard Mr. Waghela has invited my attention to the deposition made by the workman before the Labour Court on 7.9.93 in which he has stated that he

had been employed on monthly wages of Rs.450/- as Engine driver, he is having six members in his family and he was the only earning member and at the time when he made the deposition before the Labour Court in 1993 he had to spend nearly Rs.2000/- per month for his family. He had gone in search of job even to Jetpur but could not get any job. He had never done the work of agriculture. It was further stated by him that his son was engaged in the business of polishing diamond. He denied the suggestion that he was earning a sum of Rs.1000/- per month by agriculture.

6. Looking to the facts and circumstances of this case in entirety, on 14.3.97 when the matter came up before this court a suggestion was made to Mr. Waghela to seek instructions from the Gram Panchayat that while granting the relief of reinstatement with continuity of service, it may be left open for the Gram Panchayat to pass any order in accordance with law in future, but while reinstating the workman at least 30% backwages may be paid instead of 70% of backwages. Mr. Waghela has submitted that this suggestion is not acceptable to the Panchayat and this Court may pass any appropriate order.

7. I have already held that so far as relief of reinstatement and continuity of service is concerned, no interference is warranted. With regard to the question of backwages I find that in the facts of this case, when it had been admitted by the workman in his statement that there was only one sanctioned post of Engine driver and because the retrenchment of the workman had been made without complying with the requirements of S.25F of the Act, the Gram Panchayat shall have to carry the legal obligation of reinstating and continuing the workman in accordance with law and when it had been the suggestion of the Panchayat to the workman when he was cross-examined that the workman had some agricultural land and he was earning about a sum of Rs.1000/- per month, though the suggestion has been denied by the workman, it would have been sufficient had the workman been granted backwages to the extent of 30% only instead of 70%, also because the amount which he was getting at the time of termination was only Rs.450/- per month. Therefore, keeping in view the entirety of the facts of this case and the financial hardship, which the Gram Panchayat shall have to carry out in terms of the order of the labour Court, ofcourse because of its own failure to comply with the relevant provisions of law, I feel inclined to reduce the relief of backwages from 70% to that of 30% to the workman alongwith relief of reinstatement and continuity of service.

8. Special Civil Application No.613 of 1997 therefore partly succeeds and the relief of reinstatement with continuity of service as granted by the Labour Court vide impugned Award is sustained but the relief of 70% backwages is reduced to that of 30% of the backwages and the impugned Award is modified accordingly. Mr. Waghela appearing for the Gram Panchayat states that the reinstatement in terms of the Award alongwith due arrears shall be paid at the earliest but in no case later than 31.5.97 after computing the workman's wages from the effective date of reinstatement in terms of the Award, which he would have drawn had he not been retrenched in 1987, but the backwages i.e. 30%, as modified and ordered by this Court shall be paid to the workman within a period of three months from today, but in no case later than 31.7.97. Rule is made absolute in the terms as aforesaid in Special Civil Application No.613 of 1997.

9. In view of the fact that Special Civil Application No.613 of 1997 has been partly allowed and the relief of 70% of the backwages has been reduced to that of 30%, there is no question of allowing the other Special Civil Application filed by the workman claiming 100% backwages and this Special Civil Application i.e. Special Civil Application No.1477 of 1997 is hereby dismissed and the Rule is hereby discharged.

10. Both these Special Civil Applications are decided accordingly. No order as to costs.